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Attorneys for Kotaco Fuels, Inc.

**IN THE UNITED STATES DISTRICT COURT FOR THE  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

KOTACO FUELS, INC.,  
Plaintiff,

v.

TEXAS FUELING SERVICES, INC.,  
Defendant

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Case No. 4:20-cv-00267

**PLAINTIFF'S ORIGINAL COMPLAINT**

COMES NOW KOTACO FUELS, INC. and file this Plaintiff's Original Complaint complaining of TEXAS FUELING SERVICES, INC., and in support thereof would respectfully show as follows:

**I. Parties**

1.1 Plaintiff, Kotaco Fuels, Inc. ("Kotaco" or "Plaintiff") is a North Dakota corporation with its primary headquarters in Fargo, North Dakota;

1.2 Defendant, Texas Fueling Services, Inc. ("Texas Fueling" or "Defendant") is a Texas corporation with its principal place of business at 2500 West Loop South, Suite 518,

Houston, Texas 77027, which can be served with process by serving its registered agent for service of process, Danny M. Sheena, 2500 West Loop South, Suite 518, Houston, Texas 77027.

## **II. Jurisdiction and Venue**

2.1 This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1332 as the amount in controversy exceeds \$75,000, exclusive of interest and costs, and there exists complete diversity between Plaintiff, a North Dakota corporation with its principal place of business in North Dakota, and Defendant, a Texas corporation with its principal place of business in Texas.

2.2 Venue is proper in this Court as Defendant is a resident of the Southern District of Texas, specifically based in the Houston Division.

## **III. Factual Background**

3.1 On or about March 26, 2017 Kotaco and Texas Fueling entered into an agreement whereby Kotaco agreed to deliver, and Texas Fueling agreed to accept, diesel fuel to certain Texas Fueling operations located in or near Odessa, Texas.

3.2 Kotaco agreed to provide said services on credit to Texas Fueling and Texas Fueling agreed to pay Kotaco upon the terms listed on the Credit Terms and Credit Agreement signed by Texas Fueling ("Credit Agreement"). A true and correct copy of the Credit Agreement is attached hereto as **Exhibit 1**.

3.3 To further secure Texas Funding's obligation to Kotaco, Texas Funding executed an EFT Authorization Form, a true and correct copy of which is attached hereto as **Exhibit 2**.

3.4 The EFT Authorization Form executed by Texas Funding allowed payment owed to Kotaco by Texas Funding to be debited by Kotaco directly from Texas Funding's business bank account.

3.5 Between March of 2017 and February of 2019, Kotaco delivered fuel to Texas Fueling as agreed, and Texas Fueling paid Kotaco for the fuel through ACH debits directly to Kotaco from Texas Fueling's bank account.

3.6 Beginning in February 2019, however, Texas Fueling began cancelling ACH debits to Kotaco, despite Kotaco's continued delivery, and Texas Fueling's acceptance, of diesel fuel to the Odessa site.

3.7 A list of the ACH debits cancelled by Texas Fueling was prepared from the business records of Kotaco and is attached hereto as **Exhibit 3**.

#### **IV. Claims for Relief**

##### **COUNT 1 – BREACH OF CONTRACT**

4.1 The Notes represent valid and enforceable contracts between Plaintiffs and First Capital.

4.2 Plaintiffs have performed their respective obligations and duties under the Notes.

4.3 All conditions precedent to the enforcement of the Notes have been satisfied.

4.4 First Capital has defaulted in its obligations under the Notes.

4.5 First Capital's default has damaged and continues to damage Plaintiffs.

##### **COUNT 2 – QUANTUM MERUIT/QUASI CONTRACT**

4.6 By providing diesel fuel to Defendant, Plaintiff provided valuable services and/or materials to Defendant.

4.7 The diesel fuel was delivered to and for the benefit of Defendant.

4.8 Defendant accepted the diesel fuel provided by Plaintiff.

4.9 Defendant knew at the time of the delivery of the diesel fuel that Plaintiff expected to be compensated for the delivery and provision of the diesel fuel, and Plaintiff provided invoices for the delivery of the fuel promptly after delivery.

4.10 Despite demand, Defendant has failed and refused to pay Plaintiff for the delivery of diesel and provision of the diesel fuel.

**V. Attorneys' Fees**

5.1 Plaintiffs retained the undersigned counsel and firm, Quilling, Selander, Lownds, Winslett & Moser, P.C., for representation in this matter.

5.2 Plaintiffs are entitled to recover reasonable and necessary attorneys' fees in this matter pursuant to the express terms of the Notes.

5.3 Additionally, and in the alternative, this is a dispute involving the enforcement of a contract and Plaintiffs are entitled to recover their attorneys' fees pursuant to Texas Civil Practices and Remedies Code § 38.001.

WHEREFORE, Plaintiff Kotaco Fuels, Inc. respectfully requests Defendant Texas Fueling Services, Inc. be cited to appear and answer herein, and after a final hearing, that the Court find Defendant Texas Fueling Services, Inc. is liable for breach of contract to Kotaco Fuels, Inc. in the amount of \$2,140,591.42, plus interest, costs, and attorneys' fees and that Plaintiff has such other and further relief as is just.

DATED January 21, 2020.

Respectfully submitted,

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